



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: March 20, 2012

CBCA 2699

PEW FOREST PRODUCTS,

Appellant,

v.

DEPARTMENT OF AGRICULTURE,

Respondent.

Randy A. Pew, Owner of Pew Forest Products, Crescent Mills, CA, appearing for Appellant.

James L. Rosen, Office of the General Counsel, Department of Agriculture, San Francisco, CA, counsel for Respondent.

Before Board Judges **VERGILIO**, **STEEL**, and **ZISCHKAU**.

VERGILIO, Board Judge.

On January 11, 2012, the Board received from Pew Forest Products (purchaser) a timely-filed notice of appeal, 41 U.S.C.A. §§ 7101-7109 (West Supp. 2011), concerning a dispute involving its timber sale contract with the Forest Service of the Department of Agriculture (agency). Maintaining that the agency improperly estimated the volume of incense cedar under the contract, the purchaser claimed \$375,725 in damages. A contracting officer denied the claim, which is the focus of this appeal. The parties elected to utilize a binding arbitration procedure to resolve the disputed claim and decision as well as a subsequent claim dated January 12, 2012, in which the purchaser seeks an additional \$1,702,760, also said to arise from an inaccurate volume estimate of incense cedar under the same contract. The binding arbitration procedure resulted in a determination that the purchaser had identified no viable basis for relief related to the alleged shortfalls in volume; the purchaser bought timber meeting specifications. The determination specified that the

terms of the contract contained the agency's disclaimers of the estimates and placed the risk of the alleged shortfalls on the purchaser. The purchaser was not entitled to relief for the alleged variations from the estimates.

In light of the binding arbitration determination, by which the parties are bound, the Board **DENIES** this appeal.

JOSEPH A. VERGILIO
Board Judge

We concur:

CANDIDA S. STEEL
Board Judge

JONATHAN D. ZISCHKAU
Board Judge